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Caroline A. Bailey, Assistant Counsel
Department of State
210 North Office Building
Harrisburg, PA 17120

Dear Ms. Bailey,

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I am writing in response to the proposed rulemaking that appeared in the *Pennsylvania Bulletin* on June 1, 2013 in which the Department of State seeks to raise the registration fees for lobbyists, lobbying firms and principals under Act 134 of 2006.

The basics, as I am sure you have heard from others, are that a 250% increase in the fee is not justified. This is particularly true in light of the 100% increase that was implemented for the start of the 2013-2014 registration period. Approval of this regulation would mean that the fees will have increase by 600% in the time frame of December 31, 2012 to January 1, 2015. That is truly extreme.

But I want to approach this from a different perspective. For years I was deeply involved in the discussions that lead to the passage of Act 134 and its predecessor lobbying law that was thrown out by the Supreme Court. In drafting Act 134 there were a number of factors that we tried to prioritize at all points. One of those was to provide maximum information to the citizens of Pennsylvania about what was being spent to influence public policy. The other was to not create artificial and unnecessary obstacles to small organizations and non-profits thereby limiting their participation in the policy making process. Act 134, while not perfect, did a good job in realizing those goals.

Unfortunately, the proposed fee hike does serious damage to both items.

While the public image of "special interests" that lobby clearly paints them all with the brush of large coffers of money being spent to feather the nests of each interest, that is not the case. Many groups can barely put together enough money to maintain a part time or contract lobbyist, or lobbying program. For those groups, including some of my clients, the proposed fee hike to \$700 might cause some to discontinue all lobbying efforts. It is important to remember

that these groups are not major corporations or established moneyed interests, they don't spend hundreds of thousands of dollars on lobbying and they don't spend anything at all on political contributions. They don't have the money. They just do what they can to represent those in need of their services.

In spite of that, many of these groups register and report their lobbying expenses even though they are not required to under the terms of Act 134 because they do not reach the threshold amount where registration and reporting are required. They do it because of a belief that it is the right thing to do, and that the public needs to have as much information on lobbying as possible.

However, I anticipate that if the new fee schedule is approved, many of them will at the very least take the option of not registering and reporting and many others will simply stop lobbying on behalf of those they represent. These are both outcomes that we went out of our way to try to avoid when we were drafting Act 134. So my first concern is that there will be a reduction in the number of organizations that report, and that will decrease the value of lobbying disclosure to Pennsylvania's citizens.

The purpose of Act 134 was to open up state government practices to more public scrutiny. It was never intended to be, and must not be used as, a means of limiting access to the public forum and the decision making process. The proposed fee increase will likely have that effect. So, my second concern is that forcing organizations out of participation in the legislative process because of extreme fees is simply bad policy. Beyond that, it could be viewed as an inappropriate and illegal obstacle to the constitutional right of citizens to petition their government for redress of grievances.

The Department argues that the current fees are insufficient to fully cover the cost of maintaining the registration and reporting system. That may be. But Act 134 was always perceived of as a service that state government provides to its citizens to allow them to get a better view of how laws and policies are made. That puts it in the same category as many, many other government services that are paid for in part or in full by general tax revenues. Lobbying disclosure, as another public service, can and should be treated the same way.

I can find nothing in the Act that requires that all costs of administering the Act come from the fees. Therefore, that should not be imposed as a goal given the seriously negative consequences of attempting to do that, i.e. limiting public knowledge of who is lobbying and preventing individuals and groups from being able to participate in the legislative process.

I do not wish to be only negative, so let me make a suggestion. Act 134 requires there to be a fee for registration as a lobbyist, lobbying firm or principal. In no place does it mandate that the fees must always be equal for all registrants. If the Department insists that the fees cover the costs of the program, I would suggest the following.

The Department should withdraw this proposed regulation and immediately begin work on a registration fee schedule that reflects the reported expenses of a registrant. Those who spend more would have a higher registration fee and those who pay less a lower fee. This would have the dual advantages of still providing the service to the public that Act 134 was intended to provide, and also enabling all concerned Pennsylvanian's, no matter what their resources, to participate in the process of passing laws. The same concept would hold true for lobbyists and lobbying firms. A base fee for first-time registrants could be set that would then be adjusted at the time of their next registration renewal.

While I do not agree that the fees must cover the full cost of providing lobbying disclosure, I do believe that this is a much fairer way to allocate costs. If the Department still wants the fees to cover the costs, the fees can be adjusted to do that.

Given my almost 34 years of lobbying experience, and the decade or so I worked on passing lobbying disclosure legislation, I would be happy to work with the Department on such a system.

I look forward to hearing from you in response to my comments.

Sincerely,

R. David Tive
President and Owner

cc: IRRC